

Retailers' Occupation Tax applies to the total selling price of tangible personal property. No deduction from the tax base is allowed for costs of doing business such as labor or service expenses. See 86 Ill. Adm. Code 130.410. (This is a GIL).

December 29, 1999

Dear Xxxx:

This letter is in response to your letter dated December 10, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I will be retiring from my present job in January, 2000, and plan to open a small business repairing oil paintings, frames and miscellaneous works of art. Most of my income will be generated by performing these services upon the property of others. I understand that I must pay sales tax on the supplies I use in the repair of these various objects and that I will be free of any obligation to collect a sales tax for the materials used in my repair work.

However, in addition to repairing objects belonging to others, I plan to purchase damaged paintings and frames to **repair and then resell**. I require some written guidelines from your department as to how to obtain an Illinois Sales Tax Number so that I do not have to pay sales tax on these objects when I purchase them. Also, when I resell these objects, do I collect sales tax on the entire selling price of the object or do I have to deduct a certain percentage from the taxable amount to allow for the materials that went into the restoration upon which I have already paid sales tax? (I would estimate that less than 5% of the value of the repaired item's selling price would derive from the materials I use to repair it.)

When a serviceman purchases items of tangible personal property to repair or refurbish and resell, they are acting as a retailer. The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling tangible personal property at retail. 35 ILCS 120/2 (1998 State Bar Edition). The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3 (1998 State Bar Edition).

Please be advised that Retailers' Occupation Tax applies to the total selling price of tangible personal property. No deduction from the tax base is

allowed for costs of doing business such as labor or service expenses. See 86 Ill. Adm. Code 130.410, enclosed.

We have enclosed a copy of the Illinois Business Registration Packet that includes a copy of the NUC-1. You should complete this form to register.

We note from your letter that in your service activities, you plan to pay tax to your supplier on the cost price of tangible personal property you transfer incident to a sale of service. Please note that if you are otherwise required to be registered, you are unable to handle your Service Occupation Tax liabilities in this manner. What follows is a brief explanation of how servicemen may handle their tax liabilities in Illinois. You may wish to consider the third method of tax payment set forth below.

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service. Upon selling their product, they are required to collect the corresponding Service Use Tax from their customers.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons

engaged in graphic arts production). See, 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers because they, not their customers, incur the tax liability. Those servicemen are also not liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.